

**United States Bankruptcy Court  
For the Eastern District of Michigan  
Southern Division**

In re

City of Detroit

Debtor,  
.

Chapter 9

Case No. 13-53846

Judge Steven W.

Rhodes

Objection to Amended  
Disclosure Statement by  
Creditor, Ben McKenzie, Jr.

David G. Heiman (OH 0038271)  
Heather Lennox (OH 0059649)  
JONES DAY  
Attorneys for the City of Detroit  
North Point  
90I Lakeside Avenue  
Cleveland, Ohio 44114  
Telephone: (216) 586-3939  
dgheiman@jonesday.com  
hlennox@jonesday.com

Bruce Bennett (CA 105430)  
JONES DAY  
Attorney for the City of Detroit  
555 South Flower Street  
Fiftieth Floor  
Los Angeles, California 90071  
Telephone: (213) 243-2382  
bbennett@jonesday.com

Jonathan S. Green (MI P33140)  
Stephen S. LaPlante (MI P48063)

Donnelly W. Hadden (P- 14507)  
Donnelly W. Hadden, P.C.  
Attorney for Creditor, Ben McKenzie, Jr.  
2002 Bancroft  
Ann Arbor, Michigan 48108  
Telephone: 734-213-7002  
dwhadden@umich.edu

Ellen Dennis (P-24400)  
Law Office of Ellen Dennis  
Attorney for Creditor, Ben McKenzie, Jr.  
101 S. Ann Arbor St., Ste. 203A  
Saline, Michigan 48176  
Telephone: 734 944-5819  
m.ellen.dennis@gmail.com

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MILLER, CANFIELD, PADDOCK  
AND STONE, P.L.C.  
Attorneys for the City of Detroit  
150 West Jefferson  
Suite 2500  
Detroit, Michigan 48226  
Telephone: (313) 963-6420  
green@millercanfield.com  
laplante@millercanfield.com

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OBJECTION TO Amended DISCLOSURE STATEMENT,  
by CREDITOR BEN McKENZIE, JR. and  
MEMORANDUM OF LAW

Creditor, Ben McKenzie, Jr., by his attorneys, Donnelly W. Hadden and Ellen Dennis, OBJECTS to the Amended Disclosure Statement filed by the debtor (Doc 3382) because it does not adequately state the information. The Statement does not reveal the availability of \$15,200,000.00 being held in escrow by the State of Michigan Department of Treasury for the purpose of paying pre-petition claims relating to the operation of motor vehicles for which the city is self-insured. See Memorandum of Understanding dated June 4<sup>th</sup>, 2013 copy attached, Exhibit 1.

1. Ben McKenzie, Jr. has standing to make this objection because he is the holder of two claims. He was a pedestrian struck by a bus on January 7<sup>th</sup>, 2010. His claims are:

- No. 578, filed Jan 21<sup>st</sup>, 2014, a claim for unpaid No-Fault Personal Protection Benefits (“PIP” claim) *q.v.*, and
- No. 579, filed Jan 21<sup>st</sup> 2014, a claim for residual liability non-economic damages (“NI” claim) *q.v.*

His actions against the debtor are stayed by the Automatic Stay Order issued in this case on August 6<sup>th</sup>, 2013, copy attached, Exhibit 2.

2. This court, in Docket No. 2302, Alternative Dispute Resolution Procedures, recognizes *inter alia* “(3) claims, to the extent not satisfied in the ordinary course, relating to the operation of motor vehicles for which the city is self-insured pursuant to...MCL §500.3101 *et seq.*” Mr. McKenzie’s claims have not been satisfied.

3. On May 2<sup>nd</sup> 2013 debtor’s application for a Certificate of Self-Insurance was submitted but the city did not qualify because it could not meet the net worth requirement. See Exhibit 1.

4. The Department of Treasury agreed with the Department of Insurance and Financial Affairs to put \$15.2 million in escrow to pay claims and judgments stemming from the city’s obligations under the No-Fault law which it could not pay. In exchange, the latter department issued a Certificate of Self-Insurance to the city, valid until June 9<sup>th</sup>, 2014, Certificate No. 695, copy attached, Exhibit 3.

5. On July 18<sup>th</sup>, 2013, the city filed this bankruptcy case and became unable to pay pre-petition claims in the ordinary course of business.

6. Although this \$15.2 million is escrowed exclusively for the payment of claims related to the operation of motor vehicles, it should be included in the Disclosure Statement because by reserving those funds for their purpose, that makes available \$15.2 million for distribution to other creditors.

7. The existence of this fund is not listed in the Amended Disclosure Statement, Doc 3382.

#### MEMORANDUM OF LAW

MCL 500.3101 mandates that the owner or registrant of a motor vehicle required to be registered in Michigan shall maintain “...**security** for the payment of benefits under personal injury protection (PIP), property protection insurance (PPI) and residual liability insurance.” Security may be provided by purchasing automobile insurance per MCL 500.2101 -or- by

qualifying as a “self-insured” fleet owner of more than 25 vehicles under MCL 500.3101d.

In addition to having more than 25 vehicles the rules require that a fleet owner must prove to possess a net worth of more than \$5 million, Michigan Administrative Code, R.257.538. On May 9<sup>th</sup>, 2013 the debtor did not meet the net worth criteria. The Commissioner of Insurance and Industry Services was required to deny a self-insurance certificate to the city. Also, R.257.538(2)(d) provides that a Certificate of Self-Insurance can be cancelled if the owner/registrant files a petition in bankruptcy or is declared bankrupt by a federal court.

Instead, the Director issued a Certificate of Self-Insurance to the debtor, valid until June 9<sup>th</sup>, 2014, upon consideration of \$15.2 million being placed in an escrow account with the state Treasury Department as security for the payment of benefits. There is no likelihood the bankrupt debtor will be able to satisfy those claims. These funds are available to those creditors holding pre-petition PIP, PPI and residual liability claims and ought to be listed as assets in the Disclosure Statement because they free other assets to be used to satisfy other creditors.

WHEREFORE Creditor, Ben McKenzie, Jr. requests that the Disclosure Statement be Amended to show an additional \$15.2 million as stated above.

/s/ Ellen Dennis (P-24400)  
Attorney for Creditor Ben Mckenzie, Jr.  
101 S. Ann Arbor St., Suite 203A  
Saline, MI 48176  
(734) 944-5819  
[m.ellen.dennis@gmail.com](mailto:m.ellen.dennis@gmail.com)

DONNELLY W. HADDEN, P.C.  
By: /s/ Donnelly W. Hadden (P-14507)  
Donnelly W. Hadden  
Attorney for Creditor, Ben Mckenzie, Jr.  
2002 Bancroft Drive  
Ann Arbor, MI 48108-9307  
(734) 213-7002  
[dwhadden@umich.edu](mailto:dwhadden@umich.edu)

March 14, 2014

Certificate of Service

I hereby certify that on April 7, 2014, I electronically filed the foregoing paper with the Clerk of the Bankruptcy Court using the ECF system which will send notification of such filing to the following:

David G. Heiman (OH 0038271)

Heather Lennox (OH 0059649)

JONES DAY

Attorneys for the City of Detroit

North Point

90I Lakeside Avenue

Cleveland, Ohio 44114

Telephone: (216) 586-3939

dgheiman@jonesday.com

hlennox@jonesday.com

Bruce Bennett (CA 105430)

JONES DAY

Attorney for the City of Detroit

555 South Flower Street

Fiftieth Floor

Los Angeles, California 90071

Telephone: (213) 243-2382 bbennett@jonesday.com

Jonathan S. Green (MI P33140) Stephen S. LaPlante (MI P48063) MILLER,  
CANFIELD, PADDOCK AND STONE, P.L.C.

Attorneys for the City of Detroit

150 West Jefferson

Suite 2500

Detroit, Michigan 48226

Telephone: (313) 963-6420

green@millercanfield.com laplante@millercanfield.com

/s/Ellen Dennis

Attorney for Creditor,

Ben McKenzie, Jr.

101 S. Ann Arbor St., Ste. 203A

Saline, MI 48176

Telephone: 734-944-5819

m.ellen.dennis@gmail.com